



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

NOV 15 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Status of Emergency Request for a Limited Waiver from Section 1, Paragraph 7 of Executive Order 13770

FROM: Kevin Minoli *KSM*
Designated Agency Ethics Official and
Acting General Counsel

TO: Ethics File for Dennis "Lee" Forsgren

On June 18, 2017, Mr. Dennis "Lee" Forsgren was appointed to a non-career SES position at EPA. As such, he is subject to Executive Order 13770, including Section 1, Paragraph 7 that applies to former registered lobbyists. During the past two years, Mr. Forsgren served as a federally registered lobbyist on behalf of the Miccosukee Tribe of Indians of Florida. Therefore, he is prohibited from participating in any particular matter on which he lobbied within the previous two years and prohibited from participating in the specific issue area in which that particular matter falls, unless he obtains a waiver pursuant to Section 3 of the Executive Order.

In September 2017, Hurricane Irma was bearing down on the state of Florida and was anticipated to have a devastating effect upon the Miccosukee Reservation and surrounding areas. In an abundance of caution given the imminent hurricane and the anticipated potential devastation, the EPA sought an emergency and limited duration waiver from Paragraph 7 to allow Mr. Forsgren to interact with the Miccosukee Tribe, if necessary. However, this waiver – that EPA sought on September 9, 2017 and was signed on October 2, 2017 -- was ultimately not necessary because the hurricane veered away from the Miccosukee Reservation. Consequently, the Tribe was not as severely impacted as initially anticipated and did not reach out to Mr. Forsgren at all. Therefore, this limited waiver was never utilized.

Because no matters arose as part of EPA's response to Hurricane Irma that involved Mr. Forsgren's participation with the Miccosukee Tribe or Reservation, EPA now considers the terms of the limited waiver null and void. Mr. Forsgren remains recused from interacting with the Miccosukee Tribe as memorialized in his attached Recusal Statement dated October 20, 2017. The signed waiver is also attached as a reference.

Attachments



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Emergency Request for a Limited Waiver from Section 1, Paragraph 7 of Executive Order 13770

FROM: Kevin S. Minoli *K-SM*
Acting General Counsel and Designated Agency Ethics Official

THROUGH: Ryan Jackson
Chief of Staff

TO: Donald F. McGahn II
Counsel to the President
The White House

This memorandum requests a limited waiver from Section 1, paragraph 7 of Executive Order 13770 (January 28, 2017) for Dennis "Lee" Forsgren, Deputy Assistant Administrator (DAA), Office of Water (OW), at the United States Environmental Protection Agency (EPA), to allow him to participate in EPA's efforts to respond to the impacts of Hurricane Irma. Prior to his appointment at EPA, Mr. Forsgren represented the Miccosukee Tribe of Indians on three different periods of time since 2000, including from 2016 until his appointment. The Miccosukee Tribe is a federally-recognized Indian Tribe whose reservation lands are in Broward and Miami-Dade Counties in Florida. He was listed as a federally registered lobbyist for his representation of the Tribe during the period of time that ended with his appointment at EPA, triggering certain recusal obligations for matters involving the Tribe under Section 1, Paragraph 7 of Executive Order 13770.

EPA requests this limited waiver to allow Mr. Forsgren participate fully and without limitation in EPA's response to the range of environmental and human health impacts related to Hurricane Irma. Specifically, when done as part of his participation in EPA's Hurricane Irma response effort, the waiver would enable Mr. Forsgren to engage with the Miccosukee Tribe and its representatives, advise the Administrator and other senior officials on matters related to the Tribe and its Reservation, and participate in decision-making that is related to the Tribe and its Reservation. A significant focus of the agency's response effort is providing services and support to state, local, and tribal governments, and the Miccosukee Tribe is and will be a government the EPA needs to be able to engage with freely and without restriction for this purpose. Because of Mr. Forsgren's understanding of and relationships with the Tribal Government and his position

as the senior appointee in the agency's Office of Water, Mr. Forsgren is uniquely positioned to help EPA achieve its mission in this emergency situation.

BACKGROUND

On January 28, 2017, President Trump signed Executive Order 13770, "Ethics Commitments by Executive Branch Appointees." All individuals appointed to political positions on or after January 20, 2017 are required to sign the ethics pledge, which sets forth the lobbying restriction at Section 1, paragraph 7:

If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.

Mr. Forsgren signed the ethics pledge and has been acting consistent with its requirements since his appointment. Because he had been a federally registered lobbyist for Miccosukee Tribe within the preceding two years, he requires a waiver to work on the part of EPA's response to Hurricane Irma that will inevitably be specific to the Tribe. Section 3 of Executive Order 13770 allows the President or his designee to grant a waiver of any restriction contained in the Ethics Pledge.

MR. FORSGREN'S UNIQUE EXPERTISE AS IT RELATES TO EPA'S RESPONSE TO HURRICANE IRMA

Mr. Forsgren represented the Miccosukee Tribe from 2000-2003, 2005-2012, and most recently 2016 until his appointment to EPA in June 2017. In that role, he represented the Tribe on Everglades restoration, Army Corps projects that impact the Tribe in the Everglades, and Water quality issues impacting the Everglades. Through that representation he developed an understanding of the Tribe and its Reservation that is unmatched at EPA. He also developed a personal relationship with many Tribal leaders that would make him uniquely effective at communicating with them during an emergency situation, if necessary. Finally, he also gained a thorough understanding of how the Tribe and its Reservation are impacted by the water levels in its lands and surrounding areas such as the Everglades.

Because of its location within the southern reaches of Florida, the Miccosukee Reservation will almost certainly be impacted in a significant and adverse way by the wind, rain, and subsequent flooding attributable to Hurricane Irma. With wide-spread life-threatening impacts predicated across nearly all of the State of Florida, Administrator Pruitt must be able to utilize all of his senior officials in EPA's response to this emergency. That is especially true when one of those senior officials has a level of expertise to bring to the response that addresses an agency need and is not possessed by others. Mr. Forsgren possesses that unique expertise with regard to the Miccosukee Tribe, and his ability to engage with them regarding the response effort

will advance the agency's efforts to provide support and assistance to impacted governments in the most effective and timely manner possible.

REQUEST FOR A LIMITED WAIVER

The EPA is requesting a waiver from Mr. Forsgren's recusal obligations under Section 1, paragraph 7 of the Executive Order that are related to the Miccosukee Tribe and that arise as part of his participation in EPA's response to Hurricane Irma. The waiver would not extend to any other issue that Mr. Forsgren is currently recused from participating in under the Executive Order. In addition, while we are requesting a waiver without an end date in recognition of the amount of time the agency anticipates it will be engaged in response efforts, the waiver's limited substantive scope ultimately will also serve as a limitation on the duration of the waiver as well.

CONCLUSION

For the reasons set forth above, EPA respectfully requests a limited waiver of the provisions of Section 1, paragraph 7 of the Executive Order to enable Lee Forsgren to effectively carry out his duties as Deputy Assistant Administrator and advise the EPA Administrator and other senior officials on matters related to the agency's response to Hurricane Irma. He will otherwise fully comply with the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations, as well as his own attorney bar obligations.

Please feel free to contact the EPA Chief of Staff, Ryan Jackson, at (202) 564-4700 or Jackson.Ryan@epa.gov or me at (202) 564-8040 or Minoli.Kevin@epa.gov if you have any questions.

MEMORANDUM

TO: KEVIN S. MINOLI
ACTING GENERAL COUNSEL AND
DESIGNATED AGENCY ETHICS OFFICIAL
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

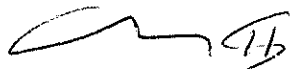
FROM: DONALD F. MCGAHN II
COUNSEL TO THE PRESIDENT
THE WHITE HOUSE

SUBJECT: Limited Waiver of Section 1, Paragraph 7 of Executive Order 13770

Official: Dennis "Lee" Forsgren
Deputy Assistant Administrator
United States Environmental Protection Agency

After reviewing your limited waiver request memorandum, I hereby waive the requirements of Section 1, paragraph 7 of Executive Order 13770 for Mr. Dennis "Lee" Forsgren that are related to the Miccosukee Tribe and that arise as part of his participation in EPA's response to Hurricane Irma. I have determined that it is in the public interest to grant this limited waiver because of serious threat to life and the environment posed by Hurricane Irma to the Miccosukee Reservation and surrounding areas, and Mr. Forsgren's expertise and experience working with the Miccosukee Tribe. He is an ideal person to engage with the Tribe and assist the Administrator and his senior leadership team to make EPA's response to Hurricane Irma more efficient and effective.

In light of the importance of the aforementioned efforts to the Trump Administration and to the United States Environmental Protection Agency, a limited waiver of the provisions of paragraph 7 of the Ethics Pledge (contained in Section 1 of Executive Order 13770) is justified for Mr. Forsgren so that he can ably advise the EPA Administrator. Accordingly, I authorize Dennis "Lee" Forsgren to participate personally and substantially in matters that arise as part of EPA's response to Hurricane Irma and that regard the Miccosukee Tribe or the Miccosukee Indian Reservation. I understand that he will otherwise fully comply with the remainder of the requirements imposed by the President's Ethics Pledge and with all applicable federal ethics laws and regulations.



Donald F. McGahn II
Counsel to the President

Dated: 20 October 2017



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 20 2017

OFFICE OF WATER

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Dennis Lee Forsgren, Jr.
Deputy Assistant Administrator

TO: Michael H. Shapiro
Acting Assistant Administrator

A handwritten signature in black ink, reading "D. Lee Forsgren", is positioned to the right of the "FROM:" field.

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13770 and the Trump Ethics Pledge that I signed, as well as my own bar obligations.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment. Although OGC/Ethics advises that conflicts are unlikely to arise, I understand that I am recused from participating personally and substantially in any particular matter that affects **Anthem Health** as a specific party because of my current level of financial ownership.

OBLIGATIONS UNDER EXECUTIVE ORDER 13770

Pursuant to Section 1, Paragraph 6 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my

former employer, **HBW Resources**, or any former client to whom I provided legal or lobbying services during the past two years is a party or represents a party. I understand that my recusal lasts until June 18, 2019, which is two years from the date that I joined federal service.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means five or more parties.

Pursuant to Section 1, Paragraph 7 of the Executive Order, since I was a registered lobbyist during the past two years, I understand that I am also prohibited from participating in any particular matter on which I lobbied within the previous two years and prohibited from participating in the specific issue area in which that particular matter falls, unless I obtain a waiver pursuant to Section 3 of the Executive Order. I understand that this recusal lasts for two years from the date that I joined federal service.

Within the previous two years, I personally lobbied on behalf of the Miccosukee Tribe of Indians of Florida on water issues. In an abundance of caution to ensure that I meet my obligations under the Trump Ethics Pledge, I had decided to recuse myself from all **water quality issues related to South Florida** until June 18, 2019. However, due to the potential threat posed by Hurricane Irma to the Miccosukee Reservation and surrounding areas, on September 9, 2017, the EPA requested a limited waiver of the provisions of Paragraph 7. On October 2, 2017, the Counsel to the President granted this limited waiver which authorized me to participate personally and substantially in matters that arise as part of EPA’s response to Hurricane Irma with respect to the Miccosukee Tribe or the Miccosukee Indian Reservation. But since the Hurricane did not impact the Miccosukee Reservation and surrounding areas, this limited waiver was ultimately not necessary and I understand that I’m still recused from all water quality issues related to South Florida.

RECUSAL LIST In effect until June 18, 2019	
FORMER EMPLOYER:	HBW Resources
FORMER LOBBYING:	Water Quality Issues Related to South Florida, except to the extent authorized under a limited waiver for matters that arise as part of EPA’s response to Hurricane Irma with respect to the Miccosukee Tribe or the Miccosukee Indian Reservation

FORMER CLIENTS:	BWX Technologies, Inc. (BWXT) Plaintiff's Group – Deepwater Horizon spill litigation Virginia Hospital and Healthcare Association Transas USA Inc.
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OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS

I am advised by OGC/Ethics that Executive Order 13770 defines “former employer” to exclude any Native American tribe,¹ and the Office of Government Ethics has determined that the same exclusion applies to the definition of “former client.”² But as an executive branch employee, I understand that I am also subject to the federal impartiality standards and have a one-year cooling off period with any former client that is a Native American tribe. Therefore, I will not participate personally and substantially in any particular matter involving specific parties in which the Miccosukee Tribe of Indians of Florida is a party or represents a party, unless I am first authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d). For federal ethics purposes, I understand that my recusal remains in effect for one year from the date that I last provided services to that client, and this federal ethics limitation does not extend to particular matters of general applicability, such as rulemaking.

ATTORNEY BAR OBLIGATIONS

Pursuant to my obligations under my bar rules, I recognize that I am obliged to protect the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I participated in personally and substantially while in private practice, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics.

SCREENING ARRANGEMENT

In order to ensure that I do not participate in matters relating to any of the entities or lobbying issue area listed above, I will instruct Louise Kitamura, OW/OAA Assistant Deputy Ethics Official, to assist in screening EPA matters directed to my attention that involve my former employer or my former clients as a specific party or the particular matter/specific issue area on which I previously lobbied. I will provide a copy of this memorandum to my principal subordinates with a copy to Justina Fugh, Senior Counsel for Ethics. I will also instruct my principal subordinates that all inquiries and comments involving the entities or lobbying issue

¹ See Exec. Order 13,770, Section 2(j), which provides that “‘former employer’ does not include any... Native American tribe.”

² See Office of Government Ethics Legal Advisory 17-02 (February 6, 2017), which states that, “[w]ith respect to Executive Order 13770, ethics officials and employees may continue to rely on OGE’s prior guidance regarding Executive Order 13490 to the extent that such guidance addresses language common to both orders,” and Office of Government Ethics Legal Advisory DO-09-011 (March 26, 2009), which states that “based on discussions with the White House Counsel’s office, OGE has determined that the definition of former client is intended to exclude the same governmental entities as those excluded from the definition of former employer.”

area on my recusal list should be directed to Louise Kitamura without my knowledge or involvement until after my recusal period ends.

If Louis Kitamura determines that a particular matter will directly involve any of the entities listed on my “specific party” recusal list or water quality issues in South Florida that are not already addressed by the limited waiver, then s/he will refer it for action or assignment to another, without my knowledge or involvement. In the event that s/he is unsure whether an issue is a particular matter from which I am recused, then s/he will consult with OGC/Ethics for a determination.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my screening arrangement, I will provide a copy of the revised recusal statement to you, OGC/Ethics, and any principal subordinates.

cc: Justina Fugh, Senior Counsel for Ethics